

REMARKS

This Revised Amendment is being filed in response to the Notice of Non-Compliant Amendment mailed September 20, 2007.

In the Notice of Non-Compliant Amendment, the Office noted that claims 1-132 were not provided with the proper status identifier. This Revised Amendment is identical to the Amendment filed on June 25, 2007, except that the status identifiers of claims 1-132 merely have been changed to indicate that the claims had previously been withdrawn.

The Remarks that follow have not been altered from the Amendment filed on June 25, 2007.

-----Original Remarks-----

Upon entry of the foregoing Amendment, claims 1-10, 14-16, 23-45, 49-51, 58-81, 84-98, 100, 102-112, 115-129, 131, and 133-153 are pending in the application. Claims 1, 36, 44, 71, 102, and 133-153 have been amended. No claims are cancelled or newly added. Applicants believe that this Amendment does not add new matter. In view of the foregoing Amendment and following Remarks, allowance of all the pending claims is requested.

EXAMINER INTERVIEW

Applicants thank Examiners Sheikh and Zeender for granting Applicants' representative the courtesy of an Examiner Interview on May 22, 2007. During the Examiner interview, Applicants' representative discussed the claims in light of the restrictions and rejections applied as set forth below in further detail herein.

ELECTION/RESTRICTION

The Examiner has withdrawn claims 1-132 from prosecution, relying on the Restriction Requirement originally presented on December 29, 2005. See Office Action at 2. In the Restriction Requirement, the Examiner alleged that the application contained three inventions, characterized as follows: (1) Group I, claims 1-10, 14-16, 23-34, 71-81, 84-98, and 100, drawn to a method of reducing excess capacity in a business; (2) Group II, claims 36-45, 49-51, 58-70,

102-112, 115-120, and 131, drawn to a system for auctioning; and (3) Group III, claims 133-153, drawn to a website for offering items for immediate sale.

Applicants initially note that in the Office communication dated April 20, 2006, the previous Examiner had conceded that the restriction requirement would be improper if the claims of the restricted groups were not distinct. Applicants have pointed out how a thorough search and examination of any one claim set would necessarily encompass search and examination of the other claim sets. For example, claim 1 from Group I and claim 36 from Group II recite substantially similar features in the form of a method claim and a system claim, respectively. Further, claim 1 from Group I and claim 133 from Group III recite substantially similar features, with claim 9 from Group I reciting the additional feature of an "instant purchase feature" recited in claim 133. Finally, claim 44 from Group II and claim 133 from Group III are similar in the same respect as discussed for claims 1 and 133.

Because the Examiner agreed to withdraw the restriction requirement if Applicants clarified these similarities among the restricted Groups (See Interview Summary dated May 22, 2007), Applicants therefore request such withdrawal.

REJECTION UNDER 35 U.S.C. § 112

The Examiner has rejected claims 133-153 under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Office Action at 3-4. In particular, the "examiner is confused with regards to" the language of "at least one of" in relation to purchasing options. Office Action at 3. As such, the Examiner has interpreted this language as providing "a choice between being a winning bidder or an immediate buy now option." Office Action at 3-4. Applicants traverse this rejection because the claims do point out and distinctly claim the subject matter that Applicants regard as the invention.

Applicants note that the claim feature in question (e.g., "enabling one or more users to purchase the one or more discounted gift certificates by at least one of placing a bid on one or more discounted gift certificates for auction . . . or via an instant purchase feature") is clear and

distinct on its face. The feature indicates that any given certificate can be sold via auction, immediate purchase, or both, in any given instance, depending upon the parameters of the certificates (e.g., a user can select whether to pay the immediate purchase price, or participate in an auction, or other options may be available, and the available options may be defined by an offering restaurant, or in other ways).

Thus, it is apparent that users can purchase the certificates using "at least one" of the auction or the immediate purchase feature, meaning that users could use either or both features in any given case. Accordingly, the claims are clear and distinct, contrary to the Examiner's assertion, and Applicants therefore request that the Examiner withdraw this rejection of the claims.

REJECTION UNDER 35 U.S.C. § 103

The Examiner has rejected claims 133, 136-140, and 145-146 under 35 U.S.C. § 103 as allegedly being unpatentable over U.S. Patent No. 5,803,500 to Mossberg ("Mossberg") in view of U.S. Patent No. 6,255,652 to Godin et al. ("Godin") and U.S. Patent No. 5,903,874 to Leonard et al. ("Leonard"). Office Action at 4-11. Applicants traverse this rejection because the Examiner has failed to establish a *prima facie* case of obviousness, for at least the reason that Mossberg, Godin, and Leonard, either alone or in combination, do not disclose, teach, or suggest all the features of the claimed invention.

More particularly, Mossberg, Godin, and Leonard, either alone or in combination, do not disclose, teach, or suggest at least the feature of "enabling one or more users to purchase the one or more discounted gift certificates by at least one of placing a bid on one or more discounted gift certificates for auction and being determined a winner, or via an instant purchase feature that enables the one or more restaurants to specify a fixed dollar amount for which a user can buy one of the one or more discounted gift certificates without participating in the auction" as recited in claim 133, for example.

The Examiner acknowledges that "Mossberg is silent with respect to a web-site comprising an online auction with an immediate buy option." Office Action at 5. However, the

Examiner alleges that "Godin discloses a website that auctions at least one item with an immediate buy option at a given fixed price, for a given period of time, without bidding." Office Action at 5. Applicants disagree with the Examiner's assessment, in that the relied upon aspects of Godin do not disclose, teach, or suggest at least this feature of the claimed invention.

Godin relates to a computer-implemented "reverse auction," in which "the price of the product decreases in a set manner during the time period of the auction and each participant is provided with the current price, the quantity on hand and the time remaining in the auction." Godin at col. 1, lines 36-40. Thus, any "given fixed price" related by Godin is a function of the reverse auction itself, as the cited portions of Godin indicate that the reverse auction begins with an available quantity of a product, which is offered at a certain price. When additional quantity of the product remains after a certain period of time elapses, the price of the remaining quantity is reduced and offered at the reduced price for another period of time.

The auctioning system of Godin operates in a fundamentally different manner from that recited in the claimed invention. For example, in Godin, auction participants do not place bids on items being auctioned. Rather, the participants can purchase one or more of the items at a first price, or wait for a time period to elapse in hopes of purchasing the items at a lower price. Further, although prices may be fixed for certain periods of time, the fixed prices are actually a function of the auction, rather than a method of purchasing the item "without participating in the auction," as recited in claim 133, for example.

Godin is deficient as applied to the claimed invention for at least the reason that users are not enabled to purchase items being auctioned by "placing a bid . . . and being determined a winner," and further because users cannot use an instant purchase feature to "buy one of the [items] . . . without participating in the auction," as recited in claim 133, for example. Rather, in Godin, users must either pay the price specified for the current time period, or else wait for the time period to lapse before possibly being offered a lower price (i.e., the users do not place bids). Furthermore, users participate in the reverse auction when they make a purchase at any of the fixed prices. Accordingly, for at least these reasons, Godin does not disclose, teach, or suggest at least the feature of "enabling one or more users to purchase the

one or more discounted gift certificates by at least one of placing a bid on one or more discounted gift certificates for auction and being determined a winner, or via an instant purchase feature that enables the one or more restaurants to specify a fixed dollar amount for which a user can buy one of the one or more discounted gift certificates without participating in the auction,” as recited in claim 133, for example.

Leonard fails to cure the deficiencies of Mossberg and Godin discussed above. For at least this reason, Mossberg, Godin, and Leonard, either alone or in combination, fail to disclose, teach, or suggest all the features of the claimed invention. Accordingly, the rejection is improper and must be withdrawn. Claims 136-140 and 145-146 depend from and add features to claim 133. Thus, the rejection of these claims is likewise improper and must be withdrawn for at least the same reasons.

The Examiner has also rejected claims 134 and 141-144 under § 103 as allegedly being unpatentable over Mossberg in view of Godin and Leonard, and further in view of U.S. Patent No. 6,012,045 to Barzilai (“Barzilai”); claims 135, 147-148 under § 103 as allegedly being unpatentable over Mossberg in view of Godin and Leonard, and further in view of Examiner’s Official Notice; claims 149-153 under § 103 as allegedly being unpatentable over Mossberg in view of Godin and Leonard, and further in view of U.S. Patent No. 6,112,181 to Shear et al. (“Shear”). Office Action at 12-19.

Applicants traverse these rejections because the Examiner has failed to establish a *prima facie* case of obviousness, for at least the reason that the references relied upon, either alone or in combination, do not disclose, teach, or suggest all the features of the claimed invention.

More particularly, for at least the reasons given above, Mossberg, Godin, and Leonard, either alone or in combination, do not disclose, teach, or suggest at least the feature of “enabling one or more users to purchase the one or more discounted gift certificates by at least one of placing a bid on one or more discounted gift certificates for auction and being determined a winner, or via an instant purchase feature that enables the one or more restaurants to specify a fixed dollar amount for which a user can buy one of the one or more

discounted gift certificates without participating in the auction" as recited in claim 133, for example.

Barzilai, the Examiner's Official Notice, and Shear, either alone or in combination, each fail to cure this deficiency with respect to the rejection of claim 133. Claim 153 recites similar features as discussed with respect to claim 133. Claims 134-135, 141-144, and 147-152 depend from and add features to claim 133. For at least this reason, the references relied upon, either alone or in combination, fail to disclose, teach, or suggest all the features of the claimed invention. Accordingly, the rejections of these claims are likewise improper and must be withdrawn for at least the same reasons.

CONCLUSION

Having addressed each of the foregoing rejections, it is respectfully submitted that a full and complete response has been made to the outstanding Office Action and, as such, the application is in condition for allowance. Notice to that effect is respectfully requested.

If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

-----End of Original Remarks-----

CONCLUSION

Having addressed each of the foregoing rejections, it is respectfully submitted that a full and complete response has been made to the outstanding Office Action and, as such, the application is in condition for allowance. Notice to that effect is respectfully requested.

If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Should the Office need to contact the Applicant's representative, the Office is invited to do so.

Date: October 8, 2007

Respectfully submitted,

By:



Eric B. Compton

Registration No. 54,806

PILLSBURY WINTHROP SHAW PITTMAN LLP

P.O. Box 10500

McLean, Virginia 22102

Main: 703-770-7900

Direct: 703-770-7721

Fax: 703-770-7901